LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
JUN 7 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1965

No. 1291

WILLIAM L. TAUB,

Petitioner,

—v.—

RANDOLPH HALE (a/k/a RANDOLPH-HALE ALCAZAR THEATRE), United States Marshals, ALBERT GINS and MELVIN J. KATZ, and all other Attorneys and Agents for RANDOLPH HALE,

Respondents.

RESPONDENTS RANDOLPH HALE, ALBERT B. GINS AND MELVIN J. KATZ'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

ALBERT B. GINS
Attorney for Respondents, Randolph Hale, Albert B. Gins & Melvin J. Katz
Office & P. O. Address
36 West 44th Street
New York, N. Y. 10036

MELVIN J. KATZ
MARVIN L. LEVITT
On the Brief

TABLE OF CONTENTS

	PAGE
Respondents' Statement of the Case	1
Reasons Why Writ Must Be Denied	5
Conclusion	7
Appendix	
Additional Portion of Opinion of Circuit Court of Appeals, Second Circuit Omitted From Petitioner's Application	9

In the

Supreme Court of the United States

October Term, 1965

No. 1291

William L. Taub,

Petitioner,

—v.—

Randolph Hale (a/k/a Randolph-Hale Alcazar Theatre), United States Marshals, Albert Gins and Melvin J. Katz, and all other Attorneys and Agents for Randolph Hale,

Respondents.

RESPONDENTS RANDOLPH HALE, ALBERT B. GINS AND MELVIN J. KATZ'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents' Statement of the Case

Petitioner has completely misstated the facts and has failed to fully, adequately and properly apprise this Honorable Court of the extensive background underlying this case and the main related case entitled "Randolph Hale also known as Randolph-Hale Alcazar Theatre, Judgment Creditor, vs. William L. Taub, Judgment Debtor. (Southern District of New York, M 18-302).

Respondents' brief in the Court below sets forth in some detail the extensive dilatory and evasive tactics continually utilized by the Petitioner herein in his vain attempts to

prevent the orderly collection by Respondent, Hale, of a valid judgment originally obtained against Petitioner on August 18, 1960 in the sum of $30,680.59, in the Northern District of California and which judgment was duly registered in the Southern District of New York on May 29, 1961.

Extensive supplementary proceedings were conducted against the Petitioner in the Southern District of New York. After being held in Civil contempt on three separate occasions by three different judges, the Petitioner was ultimately fined the amount of the judgment in September, 1963, and was ordered to pay the fine in weekly installments. Having failed to comply with the Court's mandates, an arrest order was issued in October, 1963.

The Petitioner took several unsuccessful appeals relative to the fine and arrest orders, to the Court below, in October and December, 1963. Petitioner's Habeas Corpus application to this Court was dismissed on January 3, 1964 (*Taub* v. *Warden Federal House of Detention,* 883 Misc. Oct. 1963 Term). After making three additional separate unsuccessful applications for a stay in the Court below, Petitioner then brought a separate ruse action on December 9, 1963, in the Southern District Court, wherein he became the plaintiff, and named the judgment creditor (Hale) along with the U.S. Marshal and Hale's attorneys as the defendants. Petitioner did not reveal to Judge Edward Weinfeld, then sitting as ex-parte motion judge, the extensive proceedings pending in the *Hale* v. *Taub* supplementary proceedings case. Petitioner thus obtained a temporary stay. However on argument of the motion, on the next day, when Judge Weinfeld was fully apprised of the extensive proceedings pending, the stay was immediately vacated and the debtor was thereafter lawfully arrested.

After this last maneuver failed, the debtor took no further action in the *Taub* v. *Hale et al.* case. (He never even served the summons and complaint on any of the named defendants.) The issues raised in his complaint were either moot or were already determined in the main case and were *res judicata.* After more than fourteen (14) months had elapsed and the *Taub* v. *Hale* case had remained completely dormant, Respondents brought a motion to dismiss Petitioner's action pursuant to F.R.C.P. 41(b).

Several extensive hearings were had wherein Petitioner was at all times represented by counsel. Petitioner agreed in open court to voluntarily dismiss the action, with prejudice, as against all the defendants, except the defendant Randolph Hale. (Note that the instant application erroneously still names all the defendants as respondents despite Petitioner's agreement.)

Judge Palmieri ultimately dismissed the action pursuant to F.R.C.P. 41(b), as against all the defendants including Hale, for lack of prosecution. (Petitioner fails to even set forth a copy of the said order in his Appendix.)

Petitioner appealed the dismissal to the Circuit Court of Appeals, Second Circuit, wherein the only question raised in Petitioner's brief was

> "Is a delay of 14 months after filing a complaint in failing to serve a defendant who is without the jurisdiction of the Court, a proper basis for dismissing a cause of action on the ground of unreasonable neglect to prosecute?"

The three questions now presented for the first time in the Petition for a Writ of Certiorari were never presented

to the Court below, and on this ground alone the Petition must and should be dismissed.

Furthermore the statements contained in Petitioner's brief are wholly and completely untrue. (Petitioner even fails to set forth in his appendix the complete opinion of the Court below. See Respondents' appendix for the omitted part of the opinion.)

Petitioner was never deprived of his right to counsel, nor was his counsel ever barred from any participation in any proceeding before the District Court.

Petitioner, after his release from custody in December, 1963, had fully recovered from any claimed illness, and in fact Petitioner consulted and/or retained the following attorneys in connection with this and the related *Hale* v. *Taub* proceedings after his release and during the claimed "Impossibility to prosecute":

Jacob Rassner Esq., New York City
Hon. Herbert Brownell, New York City
Hon. Samuel Pierce, New York City
Joseph Dean Edwards Esq., New York City
Jacob Rassner Esq. (second time), New York City
Donald D. Phillips Esq., Atlantic City, N. J.
H. Hugo Perez Esq., Wash. D. C.
Hon. J. Howard McGrath, Wash. D. C.

In addition Petitioner had retained and discharged over twenty (20) separate attorneys at each stage of the supplementary proceedings action in attempting to avoid paying the underlying judgment.

Finally Petitioner, contrary to his statement that he was incapacitated during the fourteen month period, was actu-

ally travelling throughout the United States and the Far East. There are letters, telegrams and statements made on the record during these extensive hearings evidencing Petitioner's extensive travels during his alleged incapacity.

This Petitioner is constantly abusing and misusing the Federal Judiciary, unfortunately so far, with impunity. He has already been before this Court in connection with these actions on several prior occasions; viz:— On January 3, 1964 Petitioner's application for a Habeas Corpus was dismissed (*Taub* v. *Warden Federal House of Detention supra*); and in July, 1965 Application by Petitioner and his then attorney for a stay of the District Court contempt hearing—*Phillips and Taub* v. *Palmieri,* —— Misc. October, 1965 Term.

Reasons Why Writ Must Be Denied

1. There is no valid legal or factual reason why Certiorari should be granted herein. There is no constitutional question involved. There are no principles, the settlement of which is of importance to public as distinguished from that of parties and there is no real and embarrassing conflict of opinion between the Circuit Courts of Appeals involved in this underlying case. (See *Rice* v. *Sioux City Memorial Park Cemetery, U. S.,* Iowa, 1955, 75 S.Ct. 614, 349 U.S. 70; 99 L.Ed. 897.)

2. The District Court below had the inherent power to dismiss for failure to prosecute; a district judge may, *sua sponte,* and without notice to the parties, dismiss a complaint for want of prosecution and such dismissal is largely a matter of the judge's discretion. The district court

judge properly exercised his discretion in dismissing the action. See *Link* v. *Wabash R. Co.*, 370 U.S. 626 (1962); 5 Moore, Federal Practice Sec. 41.11(2) at 1114-15 (2d Ed. 1964); *Zielinski* v. *United States*, 120 F. 2d 792 (2d Cir. 1941); *Messenger* v. *United States*, 231 F. 2d 328 (2d Cir. 1956).

3. Petitioner is improperly raising for the first time in this Court three questions which were not raised in the Courts below. Furthermore the factual statements alleged in these three questions are wholly and completely false and unsubstantiated by any valid proof. Petitioner's current counsel first represented Petitioner in December, 1965, long after the protracted supplementary proceedings had taken place, and counsel's allegations in his Petition lack any factual or legal basis whatsoever.

4. Petitioner has failed to comply with Rule 23 by failing to set forth in his appendix the complete opinion of the Circuit Court of Appeals and the original order of dismissal of Hon. Edmund L. Palmieri dated May 21, 1965; and further by failing to state the specific sections of the United States Constitution and the United States Code relied on by Petitioner.

CONCLUSION

Based on the foregoing it is respectfully requested that the petition for a writ of certiorari be denied and that costs be awarded to respondents for opposing this petition.

Respectfully submitted,

ALBERT B. GINS
Attorney for Respondents,
Randolph Hale, Albert B. Gins
& Melvin J. Katz
Office & P. O. Address
36 West 44th Street
New York, N. Y. 10036

MELVIN J. KATZ
MARVIN L. LEVITT
On the Brief